

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. See 86 Ill. Adm. Code 270.115. (This is a PLR.)

April 14, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of August 20, 2002 and subsequent information you submitted on December 20, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to SELLER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither SELLER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, SELLER, we respectfully request the department issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 that, based on the facts set forth below, final order acceptance for sales made by SELLER occurs in CITY1, Illinois, thus making CITY1 the proper situs for sales tax purposes and causing the CITY1' sales tax rate to apply to all such transactions.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent SELLER before the Illinois Department of Revenue (the 'Department').
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax ('ROT') consequences of the actual business practice of the Seller.
3. The Seller is not currently engaged in litigation with the Department with regard to this or any other tax matter.

4. The Department has not previously ruled regarding this matter for the Seller. Neither the Seller nor FIRM has submitted the same or similar issue to the Department on behalf of the Seller.
5. The Seller requests that certain information be deleted from the PLR prior to dissemination to others. The Seller requests that its name, the name of its parent, address, the location of its facilities, description of products being sold, and the name of its representative be deleted.
6. The Seller knows of no authority contrary to the authorities referred to and cited below.
7. For business reasons, the Seller may use one or more affiliated entities to enter into the transactions described herein. References to the Seller may refer to one or more 100% related entities in accordance with the Seller's business practices.

Statement of Material Facts

BBB is a nationwide retailer headquartered in CITY1, Illinois. BBB has recently established a wholly-owned subsidiary, SELLER, an Illinois corporation, to centralize the non-inventory procurement function in Illinois for BBB and its affiliates. SELLER maintains a separate facility in CITY1 where its employee(s) conduct order processing and acceptance. SELLER will purchase items exclusively as a reseller.

By using SELLER as a purchasing agent for property purchased for use in Illinois by BBB and its various subsidiaries, BBB plans to achieve greater efficiencies and cost savings. In addition, SELLER will also act as a paid purchasing agent to other local businesses ('Third Party Purchasers'), which will allow those businesses to outsource part of their procurement function and take advantage of BBB' purchasing power to obtain more favorable terms.

BBB and its affiliates have entered into a Master Sales Agreement ('MSA') with SELLER which sets forth the terms for all purchase transactions. Under the terms of the MSA, SELLER is authorized to make purchases on behalf of BBB and its affiliates. Employees of BBB and its affiliates enter information into a requisition template. This information is then reviewed internally by BBB, and if approved, is forwarded either in electronic or paper format to SELLER to issue a purchase order to the vendor, or issued directly to the vendor in the name of SELLER through the Purchase order Writing System ('POWS'). Under the terms of the MSA, BBB is obligated to purchase these items from SELLER once the internally approved requisition is sent to SELLER or directly to the vendor in the name of SELLER through POWS.

The items purchased, either separately or grouped, are listed on a Schedule to the Master Sales Agreement ('the MSA Schedule') which incorporates the terms of the MSA.

Each MSA Schedule contains the following information describing the purchased items: purchaser, description, quantity, price, and tax charged.

The MSA Schedule is sent to the purchaser for verification of the accuracy of the items ordered. Once the purchaser verifies the accuracy of the order, the MSA Schedule is

signed and returned to SELLER. The agreement stipulates that final purchase order acceptance by SELLER takes place when its employee receives, reviews and accepts the order by signing the MSA Schedule (which has already been signed by the purchaser) in CITY1.

Third Party Purchasers have also entered into MSA's with SELLER. The terms of these MSA's with respect to order acceptance are identical to the BBB MSA.

SELLER handles transactions from three sources, described below:

1. Manual Purchase Orders

Under the manual system, a purchaser selects the particular item and vendor and then enters that information into an electronic requisition template ('the requisition.'). This requisition is then forwarded to the appropriate personnel for authorization. Once all necessary authorizations have been obtained, the requisition is sent (either electronically or in paper form) to the employee at SELLER.

SELLER prepares a purchase order to the selected vendor, which lists SELLER as the purchaser and SELLER's office location as the bill-to address. The purchase order lists the address of the requesting BBB business unit or affiliate as the ship-to address. The vendor invoices SELLER for the purchase. SELLER also prepares an MSA Schedule including an attachment listing the purchaser, quantity, description, purchase price, and tax collected for the items subject to the MSA Schedule. SELLER then sends that MSA Schedule to the BBB purchasing department for verification of the accuracy of the items ordered. Once the BBB purchasing department verifies the accuracy of the order, the MSA Schedule is signed and sent back to SELLER. Pursuant to the terms of the MSA, SELLER's final and unconditional offer to sell will be deemed accepted when SELLER receives, reviews and accepts the order by signing the MSA Schedule (which has already been signed by the BBB purchasing department) as the Seller in its facility in CITY1.

Under a cash management agreement, BBB remits payment to the vendor on behalf of SELLER. The payment from BBB to SELLER is then recorded as an intercompany transaction through journal entries in each of the entity's general ledgers.

2. BBB and Affiliates: Automated Purchase Orders

BBB and SELLER have also coordinated to use Purchase order Writing System ('POWS'), an electronic purchasing and accounting system for certain purchases.

Employees of BBB and affiliates enter requisitions into POWS, which verifies that all internal BBB approvals have been obtained and assists in selecting a preferred vendor and price. The system then issues a purchase order for the approved requisitions to various suppliers. This purchase order lists SELLER as the purchasing (bill to) entity and certifies that the items covered by the purchase order are for resale. The requesting BBB business unit is listed as the ship to address and the items are drop shipped to the requestor. The supplier invoices SELLER at its office location.

Pursuant to the MSA, on a weekly basis, SELLER prepares an MSA Schedule with an attachment listing the requisition number, price, quantity, description, and tax for each

item covered by the MSA Schedule. SELLER then sends that MSA Schedule to the BBB purchasing department for verification of the accuracy of the items ordered. Once the BBB purchasing department verifies the accuracy of the order, the MSA Schedule is signed and sent back to SELLER. Pursuant to the terms of the MSA, SELLER's final and unconditional offer to sell will be deemed accepted when SELLER receives, reviews and accepts the order by signing the MSA Schedule (which has already been signed by the BBB purchasing department) as the Seller in its facility in CITY1.

Under a cash management agreement, BBB remits payment to the vendor on behalf of SELLER. The payment from BBB to SELLER is then recorded as an intercompany transaction through journal entries in each of the entity's general ledgers.

3. Third Party Purchase Orders

Each Third Party Purchaser (an entity unrelated to BBB which makes purchases from SELLER) enters into a Third Party Master Sales Agreement ('Third Party MSA') with SELLER prior to submitting requisitions to SELLER. The terms of the Third Party MSA related to method and location of order acceptance are identical to the MSA between BBB and SELLER. Third Party Purchasers submit requisitions to SELLER as needed. SELLER then prepares a purchase order for the requested items and sends it to the selected vendor(s). This purchase order lists SELLER as the purchaser and SELLER's office as the bill-to address. The purchase order lists the Third Party Purchaser as the ship-to address. The vendor invoices SELLER for the purchase.

SELLER will prepare a Third Party MSA Schedule to the Third Party MSA including the purchaser, quantity, description, purchase price, and tax collected for the items subject to the Third Party MSA Schedule. SELLER will send that Third Party MSA Schedule to the Third Party Purchaser for verification of the accuracy of the items ordered. Once the purchaser verifies the accuracy of the order, the Third Party MSA Schedule is signed and sent back to SELLER. Pursuant to the terms of the Third Party MSA, SELLER's final and unconditional offer to sell will become final when SELLER receives the MSA Schedule signed by the Third Party Purchaser and SELLER's employee accepts the order and signs as the Seller in its facility in CITY1.

The Third Party Purchaser remits payment to SELLER for purchases made pursuant to the Third Party MSA. SELLER then remits payments to the vendors. A cash management agreement is not utilized for the payment of third party purchases.

Ruling Request

The Seller respectfully requests a binding PLR from the Department confirming that:

1. The Seller's receipt and signature of the signed MSA Schedule in CITY1, representing the acceptance of the Seller's complete and unconditional offer to sell the specified goods as provided in the MSA, conclusively establishes CITY1 as the situs of the sale for Illinois ROT purposes; and
2. Since the MSA Schedule should be characterized as acceptance of the Seller's complete and unconditional offer to sell, the state and local tax rate in effect in CITY1 (including Home Rule Municipal Retailers' Occupational Tax ('HRMROT')) applies to the sale.

Relevant Authorities

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53, 18 Ill. 2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. Denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell is received* by the seller's place of business or by someone working within a municipality that imposes Home Rule Municipal Occupation Tax ('HRMOT'), the seller incurs HRMOT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with

similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at CITY1 conclusively establishes the situs of the sale in CITY1 and, consequently, CITY1' HRMROT applies to the Seller's sales.

In support of the ruling request, the following PLRs use consistent language stating, '...if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

The facts in PLR ST-01-0003 (February 2, 2001) deal with a wholly-owned subsidiary ('Seller') who was formed to provide a centralized procurement services for its parent and related operating subsidiaries ('customers') for their operating supplies and capital equipment needs. The customers submitted requisitions to the Seller's office in City A, and the Seller then procured the supplies and equipment from its vendors. The Seller's representative in City A signed a Sales Agreement incorporating information related to the supplies and equipment ordered by its customers, and submitted the Sales Agreement to its parent and related operating subsidiaries for their signature. The Sales Agreement became binding upon the Seller only upon the receipt of the countersigned Sales Agreement by the Seller's authorized representative in City A. The Department ruled that the receipt of a signed Sales Agreement representing the customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point where the sale occurred.

In PLR ST-00-0020 the Department ruled that the receipt of a signed contract representing a customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point in which the sale occurred. In issuing its ruling, the Department stated: 'Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.'

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in DeKalb County, the Department

ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the City of DeKalb, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the City of DeKalb if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states that 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons who accept purchase orders for your Seller in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the DuPage County Water Commission Tax and the like.' Rather the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

[We are aware of the amendment to 86 Ill. Admin. Code §1200.110, providing that all PLRs will be automatically revoked ten years after the date of issuance. However, these letter rulings are indicative of the Department's position on sales situsing at the time, and we have no reason to believe that the Department's position has changed since these rulings were issued.]

Discussion

The facts indicate that a sale is not binding on the Seller until the signed MSA Schedule is received and signed by its representative in CITY1 and this is the final action necessary to bind the Seller to the sales contract. In each case, the foregoing private letter rulings issued by the Department demonstrate the proper method for situsing the sales based on the Seller's facts. The Seller conducts all of its operations in CITY1. The Seller and the various buyers (be they BBB and its affiliates or an unrelated Third Party Purchaser) have entered into MSAs which stipulate the method by which the Seller becomes bound to the particular sale. In every case, the final act necessary to bind the Seller to the agreement is the Seller's receipt and signature of the completed MSA Schedule in CITY1. Under Illinois regulations and consistent with the private letter rulings discussed above, these sales should be sitused in CITY1 and the local sales tax rate for CITY1 should apply to the sales transaction.

Conclusion

We respectfully request that the Department issue a ruling confirming that the receipt and signature by the Seller of a customer's acceptance of the Seller's unconditional offer to sell in CITY1 conclusively establishes CITY1 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including HRMROT) in effect in CITY1 applies.

If the Department cannot conclude that the receipt and signature by the Seller of a customer's acceptance of the Seller's unconditional offer to sell under the Department's regulations, I request that the Department contact me to determine what additional information is required or to allow the taxpayer to rescind the ruling request.

We will be happy to provide copies of the agreements discussed in this ruling request and would welcome the opportunity to review the agreements with you. Please feel free to contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on these issues. Thank you.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Under the manual purchase order, the third party purchase order, and the automated purchase order scenarios described in your letter, CITY1 is the locality that has jurisdiction to impose a local tax on the sale. Note that this ruling is predicated on the fact that the purchase order is finalized prior to the delivery of the tangible personal property.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk